

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 IN RE: HIGH-TECH EMPLOYEE ANTITRUST
LITIGATION

5 THIS DOCUMENT RELATES TO: NO: Master Docket No.
6 11-CV-2509-LHK

7 ALL ACTIONS.

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9
10 CONFIDENTIAL - ATTORNEYS' EYES ONLY

11
12
13 VIDEOTAPED DEPOSITION OF DANIEL ROBERT MCKELL
March 20, 2013
14 10:06 a.m.
Hyatt Regency Hotel
15 330 Tijeras, Northwest
Albuquerque, New Mexico
16

17 PURSUANT TO THE FEDERAL RULES OF CIVIL
18 PROCEDURE, this deposition was:

19 TAKEN BY: MR. SARAH R. SCHALMAN-BERGEN
Attorney for Plaintiffs

20 REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69
21 Bean & Associates, Inc.
Professional Court Reporting Service
22 201 Third Street, Northwest, Suite 1630
Albuquerque, New Mexico 87102
23

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Q. You can put this document aside. Let's go

04:27

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off the record for five minutes.

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(A discussion was held off the record.)

7

(Recess from 4:27 p.m. to 4:40 p.m.)

8

Q. Mr. McKell, is there any reason why you

9

can't continue to give me your best testimony?

04:40

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A. No.

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1 IN THE UNITED STATES DISTRICT COURT

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7 ALL ACTIONS.

8
9 NO: Master Docket No. 11-CV-2509-LHK

10 REPORTER'S CERTIFICATE

11 I, MARY ABERNATHY SEAL, New Mexico CCR
12 #69, DO HEREBY CERTIFY that on March 20, 2013, the
13 Deposition of DANIEL ROBERT McKELL was taken before
me at the request of, and sealed original thereof
retained by:

14 Attorney for the Plaintiffs
15 Ms. Sarah R. Schalman-Bergen
16 BERGER & MONTAGUE, P.C.
17 1622 Locust Street
Philadelphia, Pennsylvania 19103-6365
(215) 875-3000

18 I FURTHER CERTIFY that copies of this
19 Certificate have been mailed or delivered to all
20 Counsel, and parties to the proceedings not
represented by counsel, appearing at the taking of
the Deposition.

21 I FURTHER CERTIFY that examination of this
22 transcript and signature of the witness was required
23 by the witness and all parties present.
24 On _____ a letter was mailed or delivered to Mr.
Sujal J. Shah regarding obtaining signature of the
25 witness, and corrections, if any, were appended to
the original and each copy of the Deposition.

1 I FURTHER CERTIFY that the recoverable
2 cost of the original and one copy of the Deposition,
3 including exhibits, to Mr. Sarah R. Schalman-Bergen
4 is \$_____.

5 I FURTHER CERTIFY that I did administer
6 the oath to the witness herein prior to the taking
7 of this Deposition; that I did thereafter report in
8 stenographic shorthand the questions and answers set
9 forth herein, and the foregoing is a true and
10 correct transcript of the proceeding had upon the
11 taking of this Deposition to the best of my ability.

12 I FURTHER CERTIFY that I am neither
13 employed by nor related to nor contracted with
14 (unless excepted by the rules) any of the parties or
15 attorneys in this case, and that I have no interest
16 whatsoever in the final disposition of this case in
17 any court.

Mary A. Seal

Mary Abernathy Seal
BEAN & ASSOCIATES, INC.
NM Certified Court Reporter #69
License Expires: 12/31/13

18 (6941K) MAS
19 Date taken: March 20, 2013
20 Proofread by: JB
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22
23
24
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**CORRECTIONS TO DEPOSITION TRANSCRIPT OF
DANIEL MCKELL, DATED MARCH 20, 2013**

*In re High-Tech Employee Antitrust Litigation
Case No. 11-CV-2509-LHK (N.D. Cal.)*

Page:Line	Amendment	Reason for Amendment
41:6	Replace: "World Network" With: "World at Work"	Correction
59:4	Replace: "all jobs in grades" With: "all jobs in each respective grade"	Clarification
64:22	Replace: "benchmarking market" With: "benchmarking and market"	Correction
65:21	Replace: "benchmarking market" With: "benchmarking and market"	Correction
68:12	Replace: "Logurajuh" With: "Logarajah"	Correction
72:21-24	Replace: "were looking for lots" With: "we're looking for, lots"	Correction
74:5	Replace: "the" With: "to"	Correction
74:6	Replace: "retain on the track side" With: "retain and attract"	Correction
77:14-17	Replace: "Actually, it may have been 2008. 2004, 2005 -- I could look, if it's important. It was sometime -- I think it was probably more 2008 than 2006." With: "I was a grade 7 from 2001 to 2006."	Correction
80:19	Replace: "Yes." With: "Yes, after the business consultant role. I wasn't a manager."	Clarification
80:22	Replace: "lateral"	Clarification

	With: "lateral move"	
82:19	Replace: "benchmarking market" With: "benchmarking and market"	Correction
84:2	Replace: "hire a grade" With: "hire a grade below"	Clarification
84:8	Replace: "the grade" With: "a grade"	Correction
84:13-16	Replace: "That's where the 2006/2008 blurs for me. It might have been a year and a half. It wasn't -- I don't recall that it was immediate, but I'd have to look at my records." With: "About a year and a half."	Correction
86:13	Replace: "to tactical grade 8" With: "to grade 8"	Correction
86:22	Replace: "April" With: "May"	Correction
89:10-12	Replace: "range, the actual practice of creating separate market ranges. I want to say it was mid-2000," With: "range. The actual practice of creating separate market ranges, I want to say it was mid-2000s,"	Correction
90:9-10	Replace: "percent, we're never specifically at the midpoint, but say plus or minus 5 percent of the midpoint, it" With: "percent -- we're never specifically at the midpoint -- but say plus or minus 5 percent of the midpoint, if it"	Correction
91:21	Replace: "the market which supply demand in jobs. That" With: "the market, supply and demand in jobs, that"	Clarification
94:11	Replace: "if any employee paid" With: "if an employee is paid"	Clarification
94:12	Replace: "Any" With: "An"	Clarification
94:18	Replace: "market"	Clarification

	With: "range"	
95:1	Replace: "managers, A, they" With: "managers, they"	Clarification
95:5	Replace: "employees" With: "managers"	Correction
95:21	Replace: "That was in 2011, 2012 we shared" With: "The pilots were in Focal 2010 and Focal 2011. In Focal 2012, we shared"	Correction
96:18	Replace: "See, we just" With: "So we just"	Correction
98:8-9	Replace: "And Yamit Livneh is the fourth. L-I-V-E-N-E-H, if that helps." With: "And Yamit Livneh is the fourth. L-I-V-N-E-H, if that helps."	Correction
102:8	Replace: "underbudget" and "overbudget" With: "under budget" and "over budget"	Correction
102:21	Replace: "some over and under, so in" With: "there are some managers who will over or under spend, but in"	Clarification
105:25	Replace: "employee as a rating" With: "employee with a rating"	Clarification
106:4	Replace: "Yes." With: "I didn't do it. Someone in the Focal Program Office did it".	Correction
116:18-20	Replace: "Yeah, balance shareholder interests, needs, health and welfare takes care of employees, meritocracy is a big tenet." With: "Yeah. Balance shareholder interests, needs. Health and welfare -- take care of employees. Meritocracy is a big tenet."	Correction
117:21	Replace: "200-" With: "Two thousand"	Correction
119:8-9	Replace: "that we had -- the" With: "that the"	Clarification

121:25	Replace: "restrictive" With: "restricted"	Correction
122:2	Replace: "most" With: "mostly"	Correction
122:20	Replace: "to" With: "for"	Correction
127:9	Replace: "intransparent" With: "un-transparent"	Clarification
142:5-8	Replace: "It's based on what companies submit to some survey that may or may not be fully conflated to moving target because different companies deliver their pay raises at different times in the year." With: "It's based on what companies submit to some survey and is comparable to a moving target because each company delivers pay raises at different times in the year."	Clarification
145:20	Replace: "labeled some" With: "labeled in some"	Clarification
146:2	Replace: "Brighter" With: "Broader"	Correction
152:16	Replace: "Mersor" With: "Mercer"	Correction
153:13	Replace: "benchmark for jobs" With: "benchmark jobs"	Clarification
154:8	Replace: "nonmanagers" With: "non-managers"	Correction
160:12-13	Replace: "Five, ten percent." With: "A typical premium might be to pay a certain job 5-10% above the market median."	Clarification
161:11	Replace: "not your director, first-level manager," With: "not your direct or first-level manager,"	Correction

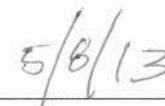
161:17	Replace: "merit market adjustment and promotion" With: "merit, market adjustment, and promotion"	Correction
162:23	Replace: "seniormost" With: "senior-most"	Correction
167:21	Replace: "from the employees -- or the other" With: "from the other"	Clarification
167:23 and 168:1	Replace: "antitrust" With: "antitrust laws"	Clarification
174:24- 175:1	Replace: "For the -- for the broad benchmarking, when it talks about specialized cuts based on a different business group, you could." With: "Yes, for the broad benchmarking. When it talks about specialized cuts based on a different business group, it could include another defendant."	Clarification
182:11-13	Replace: "we pay a geographic differential on top of their base pay to represent that higher cost of labor that exists in Santa Clara." With: "we pay a geographic differential to employees in Santa Clara on top of their base pay to represent the higher cost of labor in that location."	Clarification
183:4	Replace: "the other is right" With: "other than that, it is right"	Clarification
186:24	Replace: "direct manager" With: "direct manager level"	Clarification
187:10-12	Replace: "So it was just clarifying within our company the practices. Managers get to make that call." With: "The sentence was to clarify that within our company, managers have the final say on pay decisions, not HR."	Clarification
189:6-7	Replace: "encourage less peanut buttering, more differentiation." With: "encourage less peanut buttering and more differentiation by having the Focal tool recommend significantly better rewards for top performers as compared to average performers."	Clarification
191:9	Replace: "nonhigh" With: "non-high"	Correction

207:2	Replace: "So 100 percent would be our pay" With: "So 100 percent would mean our pay"	Correction
213:12	Replace: "competition" With: "compensation"	Correction
216:25	Replace: "Gabbi Thompson, Gabriella" With: "Gaby Thompson, Gabrielle"	Correction
227:9	Replace: "nonexempts" With: "non-exempts"	Correction
233:7	Replace: "people who have been at grade a long time" With: "their new peers in the grade to which the employee was just promoted"	Clarification
236:12-13	Replace: "conflict of equal, yet the differentiation that comes from meritocracy" With: "conflict between egalitarianism and the differentiation that comes from meritocracy"	Clarification
240:10	Replace: "stock, didn't" With: "stock, they didn't"	Clarification
241:11	Replace: "their economy" With: "the economy"	Correction
242:17	Replace: "work-out" With: "org health"	Correction
243:6	Replace: "2000" With: "2000s"	Correction
243:20-21	Replace: "Benchmarking market" With: "Benchmarking and market"	Correction
244:20-11	Replace: "employees would connect – whether or not sharing that information because it's bad information, they don't want to us know the truth," With: "employees would make the assumption that we stopped sharing information about their compensation because the truth was no longer a	Clarification

	favorable comparison,”	
249:6	Replace: “Valley, more than, here's -- we care most about” With: “Valley ... just because we are most interested in”	Clarification
256:5-6	Replace: “in -- or helped” With: “in org health”	Correction
256:14-15	Replace: “the compensation committee – a member of the board of directors retained” With: “the compensation committee retained”	Clarification
269:8-9	Replace: “tool by each individual” With: “Focal tool for each eligible employee”	Correction
269-13	Replace: “by virtue of low expectations” With: “by having received a below expectations”	Correction
270:8-11	Replace: “Meritocracy is -- let me say, internal equity -- you know, do we have it around pay because -- should employees get the same increases or be paid the exact same?” With: “Does internal equity in pay mean that employees should get the same pay raise or have the exact same pay?”	Clarification
275:23-24	Replace: “Including too many employees” With: “Including too many companies”	Correction

Subject to the above changes, I certify that the transcript is true and correct.


Signature


Date